

AMENDED IN SENATE SEPTEMBER 3, 2009

AMENDED IN SENATE JUNE 30, 2009

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY APRIL 30, 2009

AMENDED IN ASSEMBLY APRIL 16, 2009

AMENDED IN ASSEMBLY MARCH 26, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 682

**Introduced by Assembly Member ~~Bonnie Lowenthal~~ Members
Bonnie Lowenthal and Beall**

**(~~Coauthor: Assembly Member Galgiani~~ Coauthors: Assembly
Members Brownley, De Leon, Fong, Galgiani, Portantino, and
Price)**

(~~Coauthor: Senator Alquist~~ Coauthors: Senators Alquist and DeSaulnier)

February 26, 2009

An act to ~~add and repeal Section 12305.84~~ *amend Sections 12301.6
and 12305.86* of the Welfare and Institutions Code, relating to in-home
supportive services.

LEGISLATIVE COUNSEL'S DIGEST

AB 682, as amended, Bonnie Lowenthal. In-Home Supportive
Services program: fraud.

Existing law provides for the county-administered In-Home
Supportive Services (IHSS) program, under which qualified aged, blind,
and disabled persons are provided with services in order to permit them
to remain in their own homes and avoid institutionalization.

Under existing law, the State Department of Social Services is vested with state administrative authority over the IHSS program. Existing law permits services to be provided under the IHSS program either through the employment of individual providers, a contract between the county and an entity for the provision of services, the creation by the county of a public authority, or a contract between the county and a nonprofit consortium.

~~Existing law provides for the Medi-Cal program, administered by the State Department of Health Care Services, under which health care services are provided to qualified low-income persons, including the aged, blind, and disabled. These services include personal care option services, which are provided as part of the IHSS program to those Medi-Cal recipients eligible for IHSS benefits.~~

~~Existing law prohibits a person from providing or receiving payment under the IHSS program if he or she has been convicted of certain crimes for specified periods. Existing law imposes specified responsibilities on the State Department of Social Services, State Department of Health Care Services, and counties with regard to identifying and investigating fraud within the IHSS program.~~

~~This bill would require the State Department of Social Services, commencing January 1, 2010, to dedicate up to 2 personnel positions for purposes of evaluating the implementation of the above-described provisions relating to IHSS program fraud, as defined.~~

~~This bill would also require the department, in consultation with the State Department of Health Care Services, counties, the district attorney in the county with the largest caseload, and stakeholders, to produce and deliver a report to the Legislature by December 31, 2010, that contains prescribed information relating to fraud in the IHSS program, with respect to convictions occurring between January 1, 2005, and January 1, 2010.~~

~~The requirements of the bill would remain in effect only until January 1, 2011.~~

~~This bill would provide that the above provisions shall become operative only if funds are made available for its implementation from the Governor's proposed funding increase for in-home supportive services quality assurance in the 2009-10 budget for the State Department of Social Services, if the proposed funding increase is adopted. It would require the Director of Social Services to execute a declaration stating whether or not this condition has been satisfied.~~

Existing law, upon request of a recipient of in-home supportive services, or a recipient of personal care services under the Medi-Cal program, authorizes the procurement of a criminal background check on certain provider applicants, pursuant to specified provisions.

Existing legislation that will become effective on October 23, 2009, requires counties, public authorities, and nonprofit consortiums to complete criminal background checks of specified persons who seek to become supportive services providers. That legislation requires that the criminal background checks be conducted at the provider's expense.

This bill would, instead, require that the criminal background checks be conducted at the provider's expense, unless the nonprofit consortium or public authority agrees to pay for the criminal background check in which case the department shall seek federal financial participation, to the extent possible, to cover costs associated with conducting the criminal background check.

This bill would also incorporate changes to Section 12301.6 of the Welfare and Institutions Code proposed by AB 19 of the 2009–10 4th Extraordinary Session, to take effect if this bill and that bill are enacted and become effective on or before January 1, 2010, and this bill is enacted last.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 **SECTION 1.** *Section 12301.6 of the Welfare and Institutions*
- 2 *Code is amended to read:*
- 3 12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a
- 4 county board of supervisors may, at its option, elect to do either
- 5 of the following:
- 6 (1) Contract with a nonprofit consortium to provide for the
- 7 delivery of in-home supportive services.
- 8 (2) Establish, by ordinance, a public authority to provide for
- 9 the delivery of in-home supportive services.
- 10 (b) (1) To the extent that a county elects to establish a public
- 11 authority pursuant to paragraph (2) of subdivision (a), the enabling
- 12 ordinance shall specify the membership of the governing body of
- 13 the public authority, the qualifications for individual members, the
- 14 manner of appointment, selection, or removal of members, how

1 long they shall serve, and other matters as the board of supervisors
2 deems necessary for the operation of the public authority.

3 (2) A public authority established pursuant to paragraph (2) of
4 subdivision (a) shall be both of the following:

5 (A) An entity separate from the county, and shall be required
6 to file the statement required by Section 53051 of the Government
7 Code.

8 (B) A corporate public body, exercising public and essential
9 governmental functions and that has all powers necessary or
10 convenient to carry out the delivery of in-home supportive services,
11 including the power to contract for services pursuant to Sections
12 12302 and 12302.1 and that makes or provides for direct payment
13 to a provider chosen by the recipient for the purchase of services
14 pursuant to Sections 12302 and 12302.2. Employees of the public
15 authority shall not be employees of the county for any purpose.

16 (3) (A) As an alternative, the enabling ordinance may designate
17 the board of supervisors as the governing body of the public
18 authority.

19 (B) Any enabling ordinance that designates the board of
20 supervisors as the governing body of the public authority shall
21 also specify that no fewer than 50 percent of the membership of
22 the advisory committee shall be individuals who are current or
23 past users of personal assistance services paid for through public
24 or private funds or recipients of services under this article.

25 (C) If the enabling ordinance designates the board of supervisors
26 as the governing body of the public authority, it shall also require
27 the appointment of an advisory committee of not more than 11
28 individuals who shall be designated in accordance with
29 subparagraph (B).

30 (D) Prior to making designations of committee members
31 pursuant to subparagraph (C), or governing body members in
32 accordance with paragraph (4), the board of supervisors shall solicit
33 recommendations of qualified members of either the governing
34 body of the public authority or of any advisory committee through
35 a fair and open process that includes the provision of reasonable
36 written notice to, and a reasonable response time by, members of
37 the general public and interested persons and organizations.

38 (4) If the enabling ordinance does not designate the board of
39 supervisors as the governing body of the public authority, the
40 enabling ordinance shall require the membership of the governing

body to meet the requirements of subparagraph (B) of paragraph (3).

(c) (1) Any public authority created pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients under paragraph (3) of subdivision (e) within the meaning of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code. Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services to them.

(2) (A) Any nonprofit consortium contracting with a county pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients pursuant to paragraph (3) of subdivision (e) for the purposes of collective bargaining over wages, hours, and other terms and conditions of employment.

(B) Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services for them.

(d) A public authority established pursuant to this section or a nonprofit consortium contracting with a county pursuant to this section, when providing for the delivery of services under this article by contract in accordance with Sections 12302 and 12302.1 or by direct payment to a provider chosen by a recipient in accordance with Sections 12302 and 12302.2, shall comply with and be subject to, all statutory and regulatory provisions applicable to the respective delivery mode.

(e) Any nonprofit consortium contracting with a county pursuant to this section or any public authority established pursuant to this section shall provide for all of the following functions under this article, but shall not be limited to those functions:

(1) The provision of assistance to recipients in finding in-home supportive services personnel through the establishment of a registry.

(2) (A) (i) The investigation of the qualifications and background of potential personnel. The investigation may, with respect to any prospective registry applicant who is not employed before January 1, 2008, include criminal background checks requested by the nonprofit consortium or public authority and conducted by the Department of Justice pursuant to Section 15660, for those public authorities or nonprofit consortia using the

1 agencies on January 1, 2008. *Criminal background checks shall*
2 *be conducted at the provider's expense, unless the nonprofit*
3 *consortium or public authority agrees to pay for the criminal*
4 *background check in which case the department shall seek federal*
5 *financial participation, to the extent possible, to cover costs*
6 *associated with this paragraph.*

7 (ii) Upon notice from the Department of Justice notifying the
8 public authority or nonprofit consortium that the prospective
9 registry applicant has been convicted of a criminal offense specified
10 in Section 12305.81, the public authority or nonprofit consortium
11 shall deny the request to be placed on the registry for providing
12 supportive services to any recipient of the In-Home Supportive
13 Services program.

14 (B) If an applicant is rejected as a result of information contained
15 in the criminal background report, the applicant shall be advised
16 in writing of his or her right to request a copy of his or her own
17 criminal history record from the Department of Justice, as provided
18 in Article 5 (commencing with Section 11120) of Chapter 1 of
19 Title 1 of Part 4 of the Penal Code, to review the information for
20 accuracy and completeness. The applicant shall be advised that if,
21 upon review of his or her own criminal history record he or she
22 finds the information to be inaccurate or incomplete, the applicant
23 shall have the right to submit a formal challenge to the Department
24 of Justice to contest the criminal background report.

25 (C) An applicant shall be informed of his or her right to a waiver
26 of the fee for obtaining a copy of a criminal history record, and of
27 how to submit a claim and proof of indigency, as required by
28 Section 11123 of the Penal Code.

29 (D) No fee shall be charged to a provider, potential personnel,
30 or service recipient to cover any costs of administering this
31 paragraph associated with criminal background checks, or the cost
32 to the Department of Justice or any law enforcement agency for
33 processing the criminal background check. Nothing in this
34 paragraph shall be construed to prohibit the Department of Justice
35 from assessing a fee pursuant to Section 11105 or 11123 of the
36 Penal Code to cover the cost of furnishing summary criminal
37 history information. A public authority or nonprofit consortium
38 shall not seek reimbursement unless the conditions described in
39 subparagraph (F) are met.

1 (E) As used in this section, “nonprofit consortium” means a
2 nonprofit public benefit corporation that has all powers necessary
3 to carry out the delivery of in-home supportive services under the
4 delegated authority of a government entity.

5 (F) (i) Upon verification that at least 50 percent of the public
6 authority or nonprofit consortium list of registry applicants have
7 received a criminal background check, the county may request
8 reimbursement for the nonfederal share of cost associated with the
9 criminal fingerprint record check in accordance to the fiscal
10 claiming methodology.

11 (ii) The public authority or nonprofit consortium shall provide
12 a report to the State Department of Social Services on the number
13 of prospective registry applicants that have been referred to the
14 Department of Justice for a criminal background check.

15 (iii) The Department of Justice shall provide verification to the
16 State Department of Social Services on the number of prospective
17 registry applicants that have completed a criminal background
18 check.

19 (3) Establishment of a referral system under which in-home
20 supportive services personnel shall be referred to recipients.

21 (4) Providing for training for providers and recipients.

22 (5) (A) Performing any other functions related to the delivery
23 of in-home supportive services.

24 (B) (i) Upon request of a recipient of in-home supportive
25 services pursuant to this chapter, or a recipient of personal care
26 services under the Medi-Cal program pursuant to Section 14132.95,
27 a public authority or nonprofit consortium may provide a criminal
28 background check on a nonregistry applicant or provider from the
29 Department of Justice, in accordance with clause (i) of
30 subparagraph (A) of paragraph (2) of subdivision (e). If the person
31 who is the subject of the criminal background check is not hired
32 or is terminated because of the information contained in the
33 criminal background report, the provisions of subparagraph (B)
34 of paragraph (2) of subdivision (e) shall apply.

35 (ii) A recipient of in-home supportive services pursuant to this
36 chapter or a recipient of personal care services under the Medi-Cal
37 program may elect to employ an individual as their service provider
38 notwithstanding the individual’s record of previous criminal
39 convictions, unless those convictions include any of the offenses
40 specified in Section 12305.81.

(6) Ensuring that the requirements of the personal care option pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are met.

(f) (1) Any nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section shall be deemed not to be the employer of in-home supportive services personnel referred to recipients under this section for purposes of liability due to the negligence or intentional torts of the in-home supportive services personnel.

(2) In no case shall a nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section be held liable for action or omission of any in-home supportive services personnel whom the nonprofit consortium or public authority did not list on its registry or otherwise refer to a recipient.

(3) Counties and the state shall be immune from any liability resulting from their implementation of this section in the administration of the In-Home Supportive Services program. Any obligation of the public authority or consortium pursuant to this section, whether statutory, contractual, or otherwise, shall be the obligation solely of the public authority or nonprofit consortium, and shall not be the obligation of the county or state.

(g) Any nonprofit consortium contracting with a county pursuant to this section shall ensure that it has a governing body that complies with the requirements of subparagraph (B) of paragraph (3) of subdivision (b) or an advisory committee that complies with subparagraphs (B) and (C) of paragraph (3) of subdivision (b).

(h) Recipients of services under this section may elect to receive services from in-home supportive services personnel who are not referred to them by the public authority or nonprofit consortium. Those personnel shall be referred to the public authority or nonprofit consortium for the purposes of wages, benefits, and other terms and conditions of employment.

(i) (1) Nothing in this section shall be construed to affect the state's responsibility with respect to the state payroll system, unemployment insurance, or workers' compensation and other provisions of Section 12302.2 for providers of in-home supportive services.

(2) The Controller shall make any deductions from the wages of in-home supportive services personnel, who are employees of

1 a public authority pursuant to paragraph (1) of subdivision (c), that
2 are agreed to by that public authority in collective bargaining with
3 the designated representative of the in-home supportive services
4 personnel pursuant to Chapter 10 (commencing with Section 3500)
5 of Division 4 of Title 1 of the Government Code and transfer the
6 deducted funds as directed in that agreement.

7 (3) Any county that elects to provide in-home supportive
8 services pursuant to this section shall be responsible for any
9 increased costs to the in-home supportive services case
10 management, information, and payrolling system attributable to
11 that election. The department shall collaborate with any county
12 that elects to provide in-home supportive services pursuant to this
13 section prior to implementing the amount of financial obligation
14 for which the county shall be responsible.

15 (j) To the extent permitted by federal law, personal care option
16 funds, obtained pursuant to Subchapter 19 (commencing with
17 Section 1396) of Chapter 7 of Title 42 of the United States Code,
18 along with matching funds using the state and county sharing ratio
19 established in subdivision (c) of Section 12306, or any other funds
20 that are obtained pursuant to Subchapter 19 (commencing with
21 Section 1396) of Chapter 7 of Title 42 of the United States Code,
22 may be used to establish and operate an entity authorized by this
23 section.

24 (k) Notwithstanding any other provision of law, the county, in
25 exercising its option to establish a public authority, shall not be
26 subject to competitive bidding requirements. However, contracts
27 entered into by either the county, a public authority, or a nonprofit
28 consortium pursuant to this section shall be subject to competitive
29 bidding as otherwise required by law.

30 (l) (1) The department may adopt regulations implementing
31 this section as emergency regulations in accordance with Chapter
32 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
33 Title 2 of the Government Code. For the purposes of the
34 Administrative Procedure Act, the adoption of the regulations shall
35 be deemed an emergency and necessary for the immediate
36 preservation of the public peace, health and safety, or general
37 welfare. Notwithstanding Chapter 3.5 (commencing with Section
38 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
39 these emergency regulations shall not be subject to the review and
40 approval of the Office of Administrative Law.

(2) Notwithstanding subdivision (h) of Section 11346.1 and Section 11349.6 of the Government Code, the department shall transmit these regulations directly to the Secretary of State for filing. The regulations shall become effective immediately upon filing by the Secretary of State.

(3) Except as otherwise provided for by Section 10554, the Office of Administrative Law shall provide for the printing and publication of these regulations in the California Code of Regulations. Emergency regulations adopted pursuant to this subdivision shall remain in effect for no more than 180 days.

(m) (1) In the event that a county elects to form a nonprofit consortium or public authority pursuant to subdivision (a) before the State Department of Health Care Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section 14132.95, all of the following shall apply:

(A) Subdivision (d) shall apply only to those matters that do not require federal approval.

(B) The second sentence of subdivision (h) shall not be operative.

(C) The nonprofit consortium or public authority shall not provide services other than those specified in paragraphs (1), (2), (3), (4), and (5) of subdivision (e).

(2) Paragraph (1) shall become inoperative when the State Department of Health Care Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section 14132.95.

(n) (1) One year after the effective date of the first approval by the department granted to the first public authority, the Bureau of State Audits shall commission a study to review the performance of that public authority.

(2) The study shall be submitted to the Legislature and the Governor not later than two years after the effective date of the approval specified in subdivision (a). The study shall give special attention to the health and welfare of the recipients under the public authority, including the degree to which all required services have been delivered, out-of-home placement rates, prompt response to recipient complaints, and any other issue the director deems relevant.

(3) The report shall make recommendations to the Legislature and the Governor for any changes to this section that will further

1 ensure the well-being of recipients and the most efficient delivery
2 of required services.

3 (o) Commencing July 1, 1997, the department shall provide
4 annual reports to the appropriate fiscal and policy committees of
5 the Legislature on the efficacy of the implementation of this
6 section, and shall include an assessment of the quality of care
7 provided pursuant to this section.

8 (p) (1) Notwithstanding any other provision of law, and except
9 as provided in paragraph (2), the department shall, no later than
10 January 1, 2009, implement subparagraphs (A) and (B) through
11 an all county letter from the director:

12 (A) Subparagraphs (A) and (B) of paragraph (2) of subdivision
13 (e).

14 (B) Subparagraph (B) of paragraph (5) of subdivision (e).

15 (2) The department shall, no later than July 1, 2009, adopt
16 regulations to implement subparagraphs (A) and (B) of paragraph
17 (1).

18 (q) The amendments made to paragraphs (2) and (5) of
19 subdivision (e) made by the act that added this subdivision during
20 the 2007–08 Regular Session of the Legislature shall only be
21 implemented to the extent that an appropriation is made in the
22 annual Budget Act or other statute, except for the amendments
23 that added subparagraph (D) of paragraph (2) of subdivision (e),
24 which shall go into effect January 1, 2009.

25 *SEC. 1.5. Section 12301.6 of the Welfare and Institutions Code*
26 *is amended to read:*

27 12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a
28 county board of supervisors may, at its option, elect to do either
29 of the following:

30 (1) Contract with a nonprofit consortium to provide for the
31 delivery of in-home supportive services.

32 (2) Establish, by ordinance, a public authority to provide for
33 the delivery of in-home supportive services.

34 (b) (1) To the extent that a county elects to establish a public
35 authority pursuant to paragraph (2) of subdivision (a), the enabling
36 ordinance shall specify the membership of the governing body of
37 the public authority, the qualifications for individual members, the
38 manner of appointment, selection, or removal of members, how
39 long they shall serve, and other matters as the board of supervisors
40 deems necessary for the operation of the public authority.

1 (2) A public authority established pursuant to paragraph (2) of
2 subdivision (a) shall be both of the following:

3 (A) An entity separate from the county, and shall be required
4 to file the statement required by Section 53051 of the Government
5 Code.

6 (B) A corporate public body, exercising public and essential
7 governmental functions and that has all powers necessary or
8 convenient to carry out the delivery of in-home supportive services,
9 including the power to contract for services pursuant to Sections
10 12302 and 12302.1 and that makes or provides for direct payment
11 to a provider chosen by the recipient for the purchase of services
12 pursuant to Sections 12302 and 12302.2. Employees of the public
13 authority shall not be employees of the county for any purpose.

14 (3) (A) As an alternative, the enabling ordinance may designate
15 the board of supervisors as the governing body of the public
16 authority.

17 (B) Any enabling ordinance that designates the board of
18 supervisors as the governing body of the public authority shall
19 also specify that no fewer than 50 percent of the membership of
20 the advisory committee shall be individuals who are current or
21 past users of personal assistance services paid for through public
22 or private funds or recipients of services under this article.

23 (C) If the enabling ordinance designates the board of supervisors
24 as the governing body of the public authority, it shall also require
25 the appointment of an advisory committee of not more than 11
26 individuals who shall be designated in accordance with
27 subparagraph (B).

28 (D) Prior to making designations of committee members
29 pursuant to subparagraph (C), or governing body members in
30 accordance with paragraph (4), the board of supervisors shall solicit
31 recommendations of qualified members of either the governing
32 body of the public authority or of any advisory committee through
33 a fair and open process that includes the provision of reasonable
34 written notice to, and a reasonable response time by, members of
35 the general public and interested persons and organizations.

36 (4) If the enabling ordinance does not designate the board of
37 supervisors as the governing body of the public authority, the
38 enabling ordinance shall require the membership of the governing
39 body to meet the requirements of subparagraph (B) of paragraph
40 (3).

1 (c) (1) Any public authority created pursuant to this section
2 shall be deemed to be the employer of in-home supportive services
3 personnel referred to recipients under paragraph (3) of subdivision
4 (e) within the meaning of Chapter 10 (commencing with Section
5 3500) of Division 4 of Title 1 of the Government Code. Recipients
6 shall retain the right to hire, fire, and supervise the work of any
7 in-home supportive services personnel providing services to them.

8 (2) (A) Any nonprofit consortium contracting with a county
9 pursuant to this section shall be deemed to be the employer of
10 in-home supportive services personnel referred to recipients
11 pursuant to paragraph (3) of subdivision (e) for the purposes of
12 collective bargaining over wages, hours, and other terms and
13 conditions of employment.

14 (B) Recipients shall retain the right to hire, fire, and supervise
15 the work of any in-home supportive services personnel providing
16 services for them.

17 (d) A public authority established pursuant to this section or a
18 nonprofit consortium contracting with a county pursuant to this
19 section, when providing for the delivery of services under this
20 article by contract in accordance with Sections 12302 and 12302.1
21 or by direct payment to a provider chosen by a recipient in
22 accordance with Sections 12302 and 12302.2, shall comply with
23 and be subject to, all statutory and regulatory provisions applicable
24 to the respective delivery mode.

25 (e) Any nonprofit consortium contracting with a county pursuant
26 to this section or any public authority established pursuant to this
27 section shall provide for all of the following functions under this
28 article, but shall not be limited to those functions:

29 (1) The provision of assistance to recipients in finding in-home
30 supportive services personnel through the establishment of a
31 registry.

32 (2) (A) (i) The investigation of the qualifications and
33 background of potential personnel. ~~The~~ *Upon the effective date of*
34 *the amendments to this section made during the 2009–10 Fourth*
35 *Extraordinary Session of the Legislature, the investigation may,*
36 *with respect to any provider in the registry or prospective registry*
37 *applicant who is not employed before January 1, 2008, shall*
38 *include criminal background checks requested by the nonprofit*
39 *consortium or public authority and conducted by the Department*
40 *of Justice pursuant to Section 15660, for those public authorities*

1 or nonprofit consortia using the agencies on ~~January 1, 2008~~ *the*
2 *effective date of the amendments to this section made during the*
3 *2009–10 Fourth Extraordinary Session of the Legislature. Criminal*
4 *background checks shall be performed no later than July 1, 2010,*
5 *for any provider who is already on the registry on the effective*
6 *date of amendments to this section made during the 2009–10*
7 *Fourth Extraordinary Session of the Legislature, for whom a*
8 *criminal background check pursuant to this section has not*
9 *previously been provided, as a condition of the provider’s*
10 *continued enrollment in the IHSS program. Criminal background*
11 *checks shall be conducted at the provider’s expense, unless the*
12 *nonprofit consortium or public authority agrees to pay for the*
13 *criminal background check in which case the department shall*
14 *seek federal financial participation, to the extent possible, to cover*
15 *costs associated with this paragraph.*

16 (ii) Upon notice from the Department of Justice notifying the
17 public authority or nonprofit consortium that the prospective
18 registry applicant has been convicted of a criminal offense specified
19 in Section 12305.81, the public authority or nonprofit consortium
20 shall deny the request to be placed on the registry for providing
21 supportive services to any recipient of the In-Home Supportive
22 Services program.

23 (B) (i) If an applicant *or provider* is rejected as a result of
24 information contained in the criminal background report, the
25 applicant *or provider* shall be advised in writing of his or her right
26 ~~to request~~ *receive* a copy of his or her own criminal history record
27 from the Department of Justice, as provided in Article 5
28 (commencing with Section 11120) of Chapter 1 of Title 1 of Part
29 4 of the Penal Code, to review the information for accuracy and
30 completeness. The applicant *or provider* shall be advised that if,
31 upon review of his or her own criminal history record he or she
32 finds the information to be inaccurate or incomplete, the applicant
33 *or provider* shall have the right to submit a formal challenge to
34 the Department of Justice to contest the criminal background report.

35 (ii) *The department shall develop a written appeal process for*
36 *the current and prospective providers who are determined*
37 *ineligible to receive payment for the provision of services in the*
38 *In-Home Supportive Services program.*

39 (C) An applicant shall be informed of his or her right to a waiver
40 of the fee for obtaining a copy of a criminal history record, and of

1 how to submit a claim and proof of indigency, as required by
2 Section 11123 of the Penal Code.

3 ~~(D) No fee shall be charged to a provider, potential personnel,~~
4 ~~or service recipient to cover any costs of administering this~~
5 ~~paragraph associated with criminal background checks, or the cost~~
6 ~~to the Department of Justice or any law enforcement agency for~~
7 ~~processing the criminal background check. Nothing in this~~
8 ~~paragraph shall be construed to prohibit the Department of Justice~~
9 ~~from assessing a fee pursuant to Section 11105 or 11123 of the~~
10 ~~Penal Code to cover the cost of furnishing summary criminal~~
11 ~~history information. A public authority or nonprofit consortium~~
12 ~~shall not seek reimbursement unless the conditions described in~~
13 ~~subparagraph (F) are met.~~

14 (E) As used in this section, “nonprofit consortium” means a
15 nonprofit public benefit corporation that has all powers necessary
16 to carry out the delivery of in-home supportive services under the
17 delegated authority of a government entity.

18 ~~(F) (i) Upon verification that at least 50 percent of the public~~
19 ~~authority or nonprofit consortium list of registry applicants have~~
20 ~~received a criminal background check, the county may request~~
21 ~~reimbursement for the nonfederal share of cost associated with the~~
22 ~~criminal fingerprint record check in accordance to the fiscal~~
23 ~~claiming methodology.~~

24 ~~(ii) The public authority or nonprofit consortium shall provide~~
25 ~~a report to the State Department of Social Services on the number~~
26 ~~of prospective registry applicants that have been referred to the~~
27 ~~Department of Justice for a criminal background check.~~

28 ~~(iii) The Department of Justice shall provide verification to the~~
29 ~~State Department of Social Services on the number of prospective~~
30 ~~registry applicants that have completed a criminal background~~
31 ~~check.~~

32 (3) Establishment of a referral system under which in-home
33 supportive services personnel shall be referred to recipients.

34 (4) Providing for training for providers and recipients.

35 (5) (A) Performing any other functions related to the delivery
36 of in-home supportive services.

37 (B) (i) Upon request of a recipient of in-home supportive
38 services pursuant to this chapter, or a recipient of personal care
39 services under the Medi-Cal program pursuant to Section 14132.95,
40 a public authority or nonprofit consortium may provide a criminal

1 background check on a nonregistry applicant or provider from the
2 Department of Justice, in accordance with clause (i) of
3 subparagraph (A) of paragraph (2) of subdivision (e). If the person
4 who is the subject of the criminal background check is not hired
5 or is terminated because of the information contained in the
6 criminal background report, the provisions of subparagraph (B)
7 of paragraph (2) of subdivision (e) shall apply.

8 (ii) A recipient of in-home supportive services pursuant to this
9 chapter or a recipient of personal care services under the Medi-Cal
10 program may elect to employ an individual as their service provider
11 notwithstanding the individual's record of previous criminal
12 convictions, unless those convictions include any of the offenses
13 specified in Section 12305.81.

14 (6) Ensuring that the requirements of the personal care option
15 pursuant to Subchapter 19 (commencing with Section 1396) of
16 Chapter 7 of Title 42 of the United States Code are met.

17 (f) (1) Any nonprofit consortium contracting with a county
18 pursuant to this section or any public authority created pursuant
19 to this section shall be deemed not to be the employer of in-home
20 supportive services personnel referred to recipients under this
21 section for purposes of liability due to the negligence or intentional
22 torts of the in-home supportive services personnel.

23 (2) In no case shall a nonprofit consortium contracting with a
24 county pursuant to this section or any public authority created
25 pursuant to this section be held liable for action or omission of any
26 in-home supportive services personnel whom the nonprofit
27 consortium or public authority did not list on its registry or
28 otherwise refer to a recipient.

29 (3) Counties and the state shall be immune from any liability
30 resulting from their implementation of this section in the
31 administration of the In-Home Supportive Services program. Any
32 obligation of the public authority or consortium pursuant to this
33 section, whether statutory, contractual, or otherwise, shall be the
34 obligation solely of the public authority or nonprofit consortium,
35 and shall not be the obligation of the county or state.

36 (g) Any nonprofit consortium contracting with a county pursuant
37 to this section shall ensure that it has a governing body that
38 complies with the requirements of subparagraph (B) of paragraph
39 (3) of subdivision (b) or an advisory committee that complies with
40 subparagraphs (B) and (C) of paragraph (3) of subdivision (b).

1 (h) Recipients of services under this section may elect to receive
2 services from in-home supportive services personnel who are not
3 referred to them by the public authority or nonprofit consortium.
4 Those personnel shall be referred to the public authority or
5 nonprofit consortium for the purposes of wages, benefits, and other
6 terms and conditions of employment.

7 (i) (1) Nothing in this section shall be construed to affect the
8 state's responsibility with respect to the state payroll system,
9 unemployment insurance, or workers' compensation and other
10 provisions of Section 12302.2 for providers of in-home supportive
11 services.

12 (2) The Controller shall make any deductions from the wages
13 of in-home supportive services personnel, who are employees of
14 a public authority pursuant to paragraph (1) of subdivision (c), that
15 are agreed to by that public authority in collective bargaining with
16 the designated representative of the in-home supportive services
17 personnel pursuant to Chapter 10 (commencing with Section 3500)
18 of Division 4 of Title 1 of the Government Code and transfer the
19 deducted funds as directed in that agreement.

20 (3) Any county that elects to provide in-home supportive
21 services pursuant to this section shall be responsible for any
22 increased costs to the in-home supportive services case
23 management, information, and payrolling system attributable to
24 that election. The department shall collaborate with any county
25 that elects to provide in-home supportive services pursuant to this
26 section prior to implementing the amount of financial obligation
27 for which the county shall be responsible.

28 (j) To the extent permitted by federal law, personal care option
29 funds, obtained pursuant to Subchapter 19 (commencing with
30 Section 1396) of Chapter 7 of Title 42 of the United States Code,
31 along with matching funds using the state and county sharing ratio
32 established in subdivision (c) of Section 12306, or any other funds
33 that are obtained pursuant to Subchapter 19 (commencing with
34 Section 1396) of Chapter 7 of Title 42 of the United States Code,
35 may be used to establish and operate an entity authorized by this
36 section.

37 (k) Notwithstanding any other provision of law, the county, in
38 exercising its option to establish a public authority, shall not be
39 subject to competitive bidding requirements. However, contracts
40 entered into by either the county, a public authority, or a nonprofit

1 consortium pursuant to this section shall be subject to competitive
2 bidding as otherwise required by law.

3 (l) (1) The department may adopt regulations implementing
4 this section as emergency regulations in accordance with Chapter
5 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
6 Title 2 of the Government Code. For the purposes of the
7 Administrative Procedure Act, the adoption of the regulations shall
8 be deemed an emergency and necessary for the immediate
9 preservation of the public peace, health and safety, or general
10 welfare. Notwithstanding Chapter 3.5 (commencing with Section
11 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
12 these emergency regulations shall not be subject to the review and
13 approval of the Office of Administrative Law.

14 (2) Notwithstanding subdivision (h) of Section 11346.1 and
15 Section 11349.6 of the Government Code, the department shall
16 transmit these regulations directly to the Secretary of State for
17 filing. The regulations shall become effective immediately upon
18 filing by the Secretary of State.

19 (3) Except as otherwise provided for by Section 10554, the
20 Office of Administrative Law shall provide for the printing and
21 publication of these regulations in the California Code of
22 Regulations. Emergency regulations adopted pursuant to this
23 subdivision shall remain in effect for no more than 180 days.

24 (m) (1) In the event that a county elects to form a nonprofit
25 consortium or public authority pursuant to subdivision (a) before
26 the State Department of Health Care Services has obtained all
27 necessary federal approvals pursuant to paragraph (3) of
28 subdivision (j) of Section 14132.95, all of the following shall apply:

29 (A) Subdivision (d) shall apply only to those matters that do
30 not require federal approval.

31 (B) The second sentence of subdivision (h) shall not be
32 operative.

33 (C) The nonprofit consortium or public authority shall not
34 provide services other than those specified in paragraphs (1), (2),
35 (3), (4), and (5) of subdivision (e).

36 (2) Paragraph (1) shall become inoperative when the State
37 Department of Health Care Services has obtained all necessary
38 federal approvals pursuant to paragraph (3) of subdivision (j) of
39 Section 14132.95.

1 (n) (1) One year after the effective date of the first approval by
2 the department granted to the first public authority, the Bureau of
3 State Audits shall commission a study to review the performance
4 of that public authority.

5 (2) The study shall be submitted to the Legislature and the
6 Governor not later than two years after the effective date of the
7 approval specified in subdivision (a). The study shall give special
8 attention to the health and welfare of the recipients under the public
9 authority, including the degree to which all required services have
10 been delivered, out-of-home placement rates, prompt response to
11 recipient complaints, and any other issue the director deems
12 relevant.

13 (3) The report shall make recommendations to the Legislature
14 and the Governor for any changes to this section that will further
15 ensure the well-being of recipients and the most efficient delivery
16 of required services.

17 (o) Commencing July 1, 1997, the department shall provide
18 annual reports to the appropriate fiscal and policy committees of
19 the Legislature on the efficacy of the implementation of this
20 section, and shall include an assessment of the quality of care
21 provided pursuant to this section.

22 (p) (1) Notwithstanding any other provision of law, and except
23 as provided in paragraph (2), the department shall, no later than
24 January 1, 2009, implement subparagraphs (A) and (B) through
25 an all county letter from the director:

26 (A) Subparagraphs (A) and (B) of paragraph (2) of subdivision
27 (e).

28 (B) Subparagraph (B) of paragraph (5) of subdivision (e).

29 (2) The department shall, no later than July 1, 2009, adopt
30 regulations to implement subparagraphs (A) and (B) of paragraph
31 (1).

32 (q) The amendments made to paragraphs (2) and (5) of
33 subdivision (e) made by the act that added this subdivision during
34 the 2007–08 Regular Session of the Legislature shall only be
35 implemented to the extent that an appropriation is made in the
36 annual Budget Act or other statute, except for the amendments
37 that added subparagraph (D) of paragraph (2) of subdivision (e),
38 which shall go into effect January 1, 2009.

1 *SEC. 2. Section 12305.86 of the Welfare and Institutions Code,*
2 *as added by Chapter 17 of the 2009-10 Fourth Extraordinary*
3 *Session, is amended to read:*

4 12305.86. (a) Effective October 1, 2009, a county shall
5 investigate the background of a person who seeks to become a
6 supportive services provider and who is not listed on the registry
7 of a public authority or nonprofit consortium pursuant to Section
8 12301.6. This investigation shall include criminal background
9 checks conducted by the Department of Justice pursuant to Section
10 15660.

11 (b) No later than July 1, 2010, the county shall complete a
12 criminal background check pursuant to subdivision (a) for a
13 provider who is providing in-home supportive services prior to
14 October 1, 2009, and who is not listed on a public authority or
15 nonprofit consortium registry, as a condition of the provider's
16 continued enrollment in the IHSS program. Criminal background
17 checks shall be conducted at the provider's expense, *unless the*
18 *nonprofit consortium or public authority agrees to pay for the*
19 *criminal background check in which case the department shall*
20 *seek federal financial participation, to the extent possible, as*
21 *required by subdivision (e).*

22 (c) Upon notice from the Department of Justice that a
23 prospective or current provider has been convicted of a criminal
24 offense specified in Section 12305.81, the county shall deny or
25 terminate the applicant's request to become a provider of
26 supportive services to any recipient of the In-Home Supportive
27 Services program.

28 (1) If an applicant or provider is rejected as a result of
29 information contained in the criminal background report, the
30 applicant or provider shall receive a copy of his or her own criminal
31 history record from the Department of Justice, as provided in
32 Article 5 (commencing with Section 11120) of Chapter 1 of Title
33 1 of Part 4 of the Penal Code, to review the information for
34 accuracy and completeness. The applicant or provider shall be
35 advised that if, upon review of his or her own criminal history
36 record, he or she finds the information to be inaccurate or
37 incomplete, the applicant or provider shall have the right to submit
38 a formal challenge to the Department of Justice to contest the
39 criminal background report.

1 (2) The department shall develop a written appeal process for
2 the current and prospective providers who are determined ineligible
3 to receive payment for the provision of services under the In-Home
4 Supportive Services program.

5 (3) An applicant shall be informed of his or her right to a waiver
6 of the fee for obtaining a copy of a criminal history record, and of
7 how to submit a claim and proof of indigency, as required by
8 Section 11123 of the Penal Code.

9 (d) Nothing in this section shall be construed to prohibit the
10 Department of Justice from assessing a fee pursuant to Section
11 11105 or 11123 of the Penal Code to cover the cost of furnishing
12 summary criminal history information.

13 (e) The department shall seek federal financial participation, to
14 the extent possible, to cover any costs associated with this section.

15 *SEC. 3. Section 2 of this act shall take effect only if AB 19 of*
16 *the 2009–10 Fourth Extraordinary Session becomes operative.*

17 *SEC. 4. Section 1.5 of this bill incorporates amendments to*
18 *Section 12301.6 of the Welfare and Institutions Code proposed by*
19 *this bill and AB 19 of the 2009–10 Fourth Extraordinary Session.*
20 *It shall only become operative if (1) both bills are enacted and*
21 *become effective on or before January 1, 2010, (2) each bill*
22 *amends Section 12301.6 of the Welfare and Institutions Code, and*
23 *(3) this bill is enacted after AB 19 of the 2009–10 Fourth*
24 *Extraordinary Session, in which case Section 12301.6 of the*
25 *Welfare and Institutions Code, as amended by AB 19 of the*
26 *2009–10 Fourth Extraordinary Session, shall remain operative*
27 *only until the operative date of this bill, at which time Section 1.5*
28 *of this bill shall become operative, and Section 1 of this bill shall*
29 *not become operative.*

30 ~~SECTION 1. (a) The Legislature finds and declares all of the~~
31 ~~following:~~

32 ~~(1) The In-Home Supportive Services (IHSS) program is one~~
33 ~~of the fastest growing programs in the state, providing necessary~~
34 ~~in-home care to over 400,000 seniors and people with disabilities.~~

35 ~~(2) Due to increases in the population needing services,~~
36 ~~particularly because of the “baby-boomer” population reaching~~
37 ~~retirement age, the program will continue to grow.~~

38 ~~(3) Wage and benefit increases also contribute to overall~~
39 ~~spending in the program. However, in most instances wages are~~
40 ~~little more than minimum wage and, while some health benefits~~

1 may be available, these benefits tend to be fewer than what would
2 be provided in other jobs. In addition, other common employment
3 benefits, such as sick leave, are not available to IHSS workers.

4 (4) Existing law contains provisions intended to combat fraud.
5 Evidence of fraud within the IHSS program is also believed to be
6 very low. Nonetheless, with such a large, growing program, it is
7 imperative that the state and all stakeholders involved adhere to a
8 zero-tolerance policy on fraud. Fraud has the potential to harm the
9 IHSS program by removing valuable resources.

10 (b) It is the intent of the Legislature in enacting this act to
11 determine the extent and type of fraud that may occur within the
12 IHSS program, in order to evaluate the existing antifraud provisions
13 of the law and to make revisions as necessary to ensure that the
14 IHSS program carries out its mission of providing needed services
15 to seniors and people with disabilities.

16 SEC. 2. Section 12305.84 is added to the Welfare and
17 Institutions Code, to read:

18 12305.84. (a) Commencing January 1, 2010, the department
19 shall dedicate up to two personnel positions for purposes of
20 evaluating the implementation of Sections 12305.7, 12305.71,
21 12305.81, 12305.82, and 12305.83. The department may fill these
22 positions by using existing resources or it may add new positions
23 if an appropriation is provided by the Legislature for that purpose.

24 (b) The department, in consultation with the State Department
25 of Health Care Services, counties, the district attorney in the county
26 with the largest caseload, and stakeholders, including IHSS
27 consumers and providers, shall produce and deliver a report to the
28 Legislature by December 31, 2010. The report shall do all of the
29 following with respect to fraud, as defined in subdivision (a) of
30 Section 12305.8 that resulted in a conviction, or incarceration
31 following a conviction, for fraud:

32 (1) Identify the magnitude of IHSS fraud in terms of total dollars
33 inappropriately spent or removed from the program through
34 instances that resulted in conviction between January 1, 2005, and
35 January 1, 2010.

36 (2) Identify the magnitude of IHSS fraud in terms of the number
37 of consumers harmed or placed at risk of harm as a result of
38 fraudulent activity that resulted in conviction between January 1,
39 2005, and January 1, 2010.

1 ~~(3) Identify the number of people involved in fraud for each of~~
2 ~~the following categories: IHSS providers, IHSS consumers, state~~
3 ~~workers, county workers, and others. In the case of “others,” the~~
4 ~~report shall describe, with specificity, but without revealing~~
5 ~~personal identifying information, the function of the persons~~
6 ~~committing fraud.~~

7 ~~(4) Provide recommendations as to the best means possible to~~
8 ~~combat IHSS fraud, taking into account the magnitude of the~~
9 ~~problem and the need to protect services for vulnerable populations.~~

10 ~~(e) This section shall remain in effect only until January 1, 2011,~~
11 ~~and as of that date is repealed, unless a later enacted statute, that~~
12 ~~is enacted before January 1, 2011, deletes or extends that date.~~

13 ~~SEC. 3. If the report required by subdivision (b) of Section~~
14 ~~12305.84 of the Welfare and Institutions Code, as contained in~~
15 ~~Section 2 of this act, is not delivered to the Legislature by~~
16 ~~December 31, 2011, the repeal of Section 12305.84 shall not~~
17 ~~terminate the obligation of the department to prepare and deliver~~
18 ~~the report.~~

19 ~~SEC. 4. Sections 2 and 3 of this act shall become operative~~
20 ~~only if funds are made available for its implementation from the~~
21 ~~Governor’s proposed funding increase for in-home supportive~~
22 ~~services quality assurance in the 2009–10 budget for the State~~
23 ~~Department of Social Services, if that proposed funding increase~~
24 ~~is adopted. The Director of Social Services shall execute a~~
25 ~~declaration, which shall be retained by the director, stating whether~~
26 ~~or not the condition described in this section has been satisfied.~~